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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd July 2009

No. 6747-1i/1-(S)-8/2004(Pt.)/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 30th January, 2009 in I.D. Case No. 7 of 2005 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial Dispute between the Management of M/s. Bindlish Chemicals and Pharmaceuticals Works, Bareipali, District Sambalpur and their workman Shri Udhaba Suna was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 7 OF 2005

Dated the 30th January, 2009.

Present:

Smt. Suchismita Mishra, L.L.M.,
Presiding Officer,
Labour Court,
Sambalpur.

Between:

The Management of
M/s. Bindlish Chemicals and
Pharmaceuticals Works,
Industrial Estate, Bareipali,
Dist: Sambalpur

(And)

Their Workman,
 Shri Udhab Suna,
 C/o. A.L.O., Sambalpur,
 Office of the D.L.C.,
 Sambalpur Division,
 Sambalpur. ... Second-party —Workman.

Appearances :

For the First-Party—Management	... Self
For the Second-Party— Workman	... Self

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of power conferred upon them under Section 12 read with Clause (C) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short “the Act”) have referred the following disputes for adjudication by this courts.

“Whether the refusal of employment of the workman Sri Udhab Suna by the employer M/s. Bindlish chemical and pharmaceuticals works, Sambalpur with effect from the 21st January, 2002 is legal and /or justified ?

If not, what relief the workman is entitled to?”

2. Shorn of unnecessary details, the facts leading to the present dispute between the First-party namely the Management of M/s. Bindlish Chemicals and Pharmaceuticals works, Sampalpur on the one hand and the workman Sri Udhab Suna on the other are stated below:—

The case of the 2nd party Workman as would appear form the statement of claim filed by him in the present proceeding runs as below:—

The Second-party Workman was employed as a labourer by the First-party Management of M/s. Bindlish Chemicals and Pharmaceuticals works, Sambalpur from the year 1985 and continued as such under the said management till 16th December, 2002. He was disengaged from his job with effect from the 21st January, 2001. During the aforesaid period of his engagement he was initially paid Rs. 50/- towards his wages every week. Then after four years of his employment the was paid Rs.600/- as his wages every month which was ultimately raise to Rs. 1220/- in the year 2001. He had also been enrolled under the Provident Fund Scheme by his employer i.e. First-party Management from the year 1995. However, as he remained absent in his duties form 16th December,

2001 to 20th January, 2002. Owing to his illness, the First-party Management denied him his employment in the aforesaid establishment. The First-party Management also did not give him his provident fund slips for the period commencing from 2000 to 2002 and Gratuity which he has earned by dint of his Sixteen years of continuous service in the establishment of the First-party Management. After being refused employment in the industry of the First-party Management he made a request to his employer to give him his provident fund Account slips for the aforesaid period and pay him the gratuity amount as admissible to him. As the First-party Management turned a deaf ear to his request and made him run to them time and again, he (the workman) brought the matter to the notice of the Labour Officer concerned. The District Labour Officer, Sambalpur first attempted to effect a conciliation between the parties and when the First-party Management did not appear before him for the aforesaid purpose the matter was sent to the Government in the Labour & Employment Department to make a reference for adjudication of their dispute by this Court.

3. The First-party Management in his written statement contested the plea advanced by the Second-party Workman on the following grounds:

The First-party Management being a partnership firm and a small scale industry was not authorised to engage more than twenty labourers on any day and as such the Second-party Workman was engaged in the establishment of the First-party Management as a casual labourer from the year 1995. The employment of the Second-party Workman was purely on temporary basis as per the requirement depending upon the availability of work and subject to his satisfactory performance. The second-party workman was enrolled in the Provident Fund Scheme from the year 1995-96 only.

The First-party Management had got licence for glass bottled preparing/distilled water transmission fluids, injectable and common drugs. However, due to some mishap occurred at S.C.B. Medical College, Hospital, Cuttack while using the glass bottled saline water, the matter was investigated into and ultimately the licence given to the First-party Management's establishment for manufacturing drugs was not renewed. As a result the First-party Management had to close the aforesaid industry during the month of February, 2001. At that time the Second-party Workman was paid all his dues by the First-party Management and their relationship as employer and employee ended thereafter.

Since the Industry of the First-party Management was already closed during February, 2001 the question of refusal of employment to the second-party Workman on 21st February, 2002 by the First-Party Management did not arise at all. The Management also challenged the maintainability of the reference as made by the Government in the Labour & Employment Department on the ground that the same has not been made in consonance with the provisions of law and more over this Court is not empowered to

adjudicate matters relating to the gratuity and provident fund of the Second-party Workman.

4. The Second-party Workman filed his rejoinder to the written statement of the First-Party Management denying the pleas advanced by the First-party Management and stated further that his employer the First-party Management was running two companies namely Bindlish Chemicals and Reliance Laboratory at one place and the workmen were working in both the companies. Drugs were manufactured in Bindlish Chemical Company even after the preparation of distilled water therein was stopped and further the aforesaid company was functioning even after his employment there was terminated by the First-party Management.

5. On the above pleadings only two issues were framed in this proceeding and those are :

- (i) "Whether the refusal of employment of the Workman Shri Udhab Suna by the employer M/s. Bindlish Chemicals and pharmaceutical Works, Sambalpur with effect from the 21st January, 2002 is legal and/or justified ?
- (ii) If not, what relief the Workman is entitled to ?"

6. In this proceeding the Workman submitted his evidence on affidavit on 25th May, 2007 which was received as his examination in-chief and he was cross-examined on behalf of the First-party Management on 13th July, 2007. The Second-party Workman also examined another witness namely Jaya Bihari Sahu (W.W.2) on his behalf on 17th August, 2007 and he was cross-examined on behalf of the First-party Management on the same day. Similarly on behalf of the Management, Debendra Kumar Lath, the Managing Partner of M/s. Bindlish Chemicals and Pharmaceuticels Works, Sambalpur was examined and he was also cross-examined on behalf of the Second-party Workman.

7. On a careful scrutiny of the evidence adduced by both the parties it could be gathered that the Second-party Workman was working in the above said industry of the First-Party Management since August, 1985 till the 15th December, 2001 without any interruption in his service. His job was also continuous in nature even though he was employed as a casual labourer. It is admitted by the Management that there were deductions from the wages of the Second-party Workman for payment of contribution towards his Provident Fund from the year 1995. The First-party Management has no where controverted the version of Second-party Workman about the time of his joining the establishment of the First-party Management as well as his (the Second-party Workman) explanation that there was no deduction from his wages prior to the year 1995 towards his Provident Fund as during those period of his employment he had received his wages on weekly payments. During the Cross-examination of the Second-party Workman, the First-party Management suggested him that he had left the headquarters on the 15th

December, 2001 without informing anyone. Which the Second-party Workman categorically denied and explained that he had left the headquarters on the aforesaid date because of his illness. The testimony of the Second-party Workman that he remained absent from 16th December, 2001 due to his illness and after his recoupment he had gone to his work place to join his duties on the 21st January, 2002 remained totally unchallenged. So also his (W.M.1) evidence that when he went to join his duty in the aforesaid establishment on 21st January, 2002, his employer Debendra Kumar Lath (First-party Management) did not allow him to join in his duty has not been discredited by the First-Party Management in any manner. The First-party Management rather, took a consistent plea that the Second-Party Workman had left his job in their unit when they stopped the manufacturing work at the aforesaid unit from February, 2001 due to suspension of their licence by the Drug Controller, Orissa which of course the First-party Management miserably failed to establish in the present proceeding for the following reasons.

It is quite clear from the statute i.e. I.D. Act, 1947 that in the event of closure of an Industry/Establishment/Undertaking law demands that the Management should seek permission of the appropriate Government for such closure of the Establishment/Industry/Undertaking as well as retrenchment of the Workmen employed therein. As held by the Hon'ble Supreme Court in Oswal Agro Furane Ltd. And another V. Oswal Agro Furane Workers Union & other reported in AIR 2005 S.C. 1555.

" A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and /or effect retrenchment of Workmen working in such industrial establishment is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment : "Section 25-O speaks of procedure for closing down an undertaking, obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character".

With the above clear mandates of law for affecting a valid closure of an undertaking and retrenchment of Workmen employed therein, absence of any documentary proof/evidence with the First-party Management about closure of the above industry except the pleading in their written statement certainly makes their aforesaid plea vulnerable. On the otherhand I found that there is sufficient materials on record to come to a conclusion that the Second-party Workman was working in an industry owned and managed by the First-party Management there manufacturing of drugs and bottled saline water was going on for a period of not less than sixteen years prior to his termination from

the services by the First-party Management. The First-party Management's inability to file a single piece of document/evidence to make this Court to come to a conclusion that indeed the industry of the First-Party Management was closed for certain reasons from a certain date in the month of February, 2001 which eventually led the Management to terminate the services of the Workman with effect from the 16th December, 2001 rather fortifies the claim of the Workman that he was unjustifiably denied employment by the First-party Management. The evidence of Management's witness (M.W.1) in the present proceeding clearly indicates that the First-party Management gave much more emphasis on his plea that the Second-party Workman had abandoned his service/employment apprehending a closure of the unit since the licence for manufacturing drugs in the First-party Management's Industry was not renewed. However, the Management utterly failed to prove this plea of his also in the present case.

7. The next question which arises for consideration is as to whether termination of services of the Second-party Workman with effect from 16.12.2001 or 21.01.2002 as the case may be by the First-party Management can be deemed as legal and justified. As discussed in the foregoing paragraphs since the management failed to prove that there was closure of the First-party Management's Industry which automatically resulted in retrenchment of some workmen it becomes imperative to see whether refusal of employment to the workman by the First-party Management when he volunteered to join his duties on 21.01.2002 after his temporary absence from duty since 16.12.2001 on account of his illness was proper and justified. The evidence from the side of the management is totally silent on this aspect. But the evidence adduced by the /Second-party Workman in the present proceeding that he was not allowed to resume his work in the establishment of the First-party Management when he went there after recovering from his illness is quite clinching and nothing was elicited in the cross-examination of the witnesses examined on behalf of the second-party workman/which may shake their credibility in this regard. Therefore, I must hold that such unceremonious termination of the Second-party Workman from his employment by the First-party Management without affording him (the workman) and opportunity to explain his admitted temporary absence from work is certainly unjustified and calls for redressal. There is no evidence, whatsoever, adduced by the management to prove that the second-party workman was terminated from his services after a due enquiry following the principles from natural justice.

In view of the discussion made above I have no hesitation to hold that the termination of services of the Second-party Workman by the First-party Management is illegal and unjustified.

8. Now the question comes as to what relief the workman is entitled. The workman though in his claim statement sought for his reinstatement in service with full back wages

and other service benefits has neither pleaded nor proved that he was not gainfully employed in any alternative employment during the period of his absence. Since his termination from services by the First-party Management has already been held illegal and unjustified he is certainly entitled for his reinstatement in the job which he was doing during the period of his employment in the Industry of the First-party Management. But in the instant case the Second-party Workman in course of his advancing argument informed the court by filing a written memo that the industry where he was working has already stopped functioning in the meantime for which his employment therein is no more required. However, as he was driven out of his job without any fault on his part he wanted that he should be paid his back wages and the gratuity amount which he is entitled to get for rendering his services for a period of sixteen years in the Industry of the First-party Management by the First-party Management alongwith his provident fund account slips for the period commencing from the year 2000 to 2002. The Second-party Workman, however, did not prove as to from which year the Industry of the First-party Management had stopped functioning. Since there is no evidence before the court that the aforesaid Industry / Establishment was closed in the year 2002 it has to be presumed that the aforesaid Industry was functioning atleast during the time the workman had raised this dispute through District Labour Officer in the year 2004 and also till the time when the workman adduced his evidence before this court.

The witness Jaya Bihari Sahu (W.W.2) categorically deposed during his cross-examination that one Reliance Laboratory was the sister concern of Bindlish Chemicals and both the Industries were functioning in the same premises and further Bindilish Chemicals and Reliance Laboratory were amalgamated in the year 2000 and converted to a single unit in the name and style Reliance Laboratory. As it is already found that the First-party Management had terminated the services of the Second-party Workman illegally without any justifiable grounds since 21st January, 2002 it is certainly required to reinstate the Workman in his establishment. However, since the Workman is no more interested to serve in the establishment of the First-party Management as stated by him in course of advancing his argument in this proceeding, in that event it is felt that relief of compensation to the Workman can be granted in lieu of his reinstatement. Apart from this the First-party Management is also liable to pay him the gratuity amount as admissible to him for rendering his services for a period of sixteen years in the First-party Management Establishment. The Workman is also entitled to receive his provident fund amount which was contributed from his wages during the year 2000 to 2001 and 2001 to 2002.

Thus as aforesaid in the instant proceeding it is felt that the purpose of justice would serve its best if the First-party Management would pay compensation of Rs. 60,000/-

(Rupees Sixty Thousand only) to the Workman alongwith the gratuity amount accrued to him for his services from the year 1985 to 2002 in the establishment of First-party Management as well as the provident fund amount contributed by him from the year 2000 to 2002 through his employer i.e. First-party Management to the Second-party Workman forthwith. Hence the following award.

AWARD

The reference is answered on contest in favour of the Second-party Workman and against the First-party Management. The refusal of employment of the Workman Shri Udhab Suna by the employer M/s. Bindlish Chemical and Pharmaceuticals Works, Sambalpur with effect from 21st January, 2002 is held illegal and unjustified and the First-party Management is directed to pay compensation of Rs. 60,000/- (Rupees Sixty thousand only) to the Workman alongwith the gratuity amount accrued to him for his services from the year 1985 to 2002 in the Establishment of First-party Management as well as the provident fund amount contributed by him from the year 2000 to 2002 through his employer i.e. First-party Management to the Second-party Workman forthwith.

Dictated and corrected by me.

Smt. Suchismita Mishra, L.L.M.

30-01-2009

Presiding Officer,
Labour Court,
Sambalpur.

Smt. Suchismita Mishra, L.L.M.

30-01-2009

Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

K. C. BASKE

Under-Secretary to Government